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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

IVORY MALLORY,

Defendant and Appellant.

A154777

(City & County of San Francisco  
Super. Ct. No. 179352)

Defendant appeals from the trial court's order extending his commitment to Napa State Hospital as a mentally disordered offender (MDO). (Pen. Code,<sup>1</sup> § 2972.) He contends the evidence is insufficient to support the court's finding that he is currently dangerous. We conclude the evidence is sufficient and affirm the order extending defendant's commitment.

**Factual and Procedural History**

On November 7, 2002, defendant pled guilty to assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)) and admitted having suffered a prior strike conviction. Defendant was sentenced to state prison for a total term of four years and was committed as a MDO before the expiration of the prison sentence. Between 2006 and 2016, the San Francisco District Attorney annually petitioned for one-year extensions of defendant's MDO commitment, and these petitions were each sustained.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

On August 7, 2017, the San Francisco County District Attorney filed the present petition to extend defendant's treatment. After defendant waived his right to a jury trial, the court conducted a one-day bench trial on the petition.

Dr. Christian Mateescu testified that he had been defendant's treating psychiatrist at Napa State Hospital for two and a half years. During that time, he met with defendant once a week and also regularly met with a treatment team and a social worker regarding defendant's treatment. Dr. Mateescu opined that defendant suffers from "schizoaffective disorder, bipolar type."

When Dr. Mateescu first began treating defendant, defendant had "florid psychotic episodes," during which he appeared "totally mentally disorganized," had illusions [and] hallucinations," and was "pretty irritable, verbally abusive towards staff." Defendant sometimes exhibited symptoms of depression, such as staying in his room for several days in a row; other times, he exhibited symptoms of mania, including excessive sociability, slurred speech, and appearing "jovial, laughing, laughing to himself, and without any particular reason." Defendant also suffered from auditory hallucinations. Dr. Mateescu personally observed defendant carrying on animated conversations with himself "many times."

Although defendant apparently had not committed any violent acts while being treated as an MDO, Dr. Mateescu testified that defendant's delusions have the potential to lead to violence. He testified that defendant told him if he is released from the hospital he will get money from the people who owe him. When asked what he would do if he did not get the money, defendant replied, "I'm going to force that person to give me the money that I deserve." When the doctor asked him whether he would use violence to get the money, defendant replied, "No. I might take them with a gun."

Defendant's symptoms, however, have improved gradually over the last year as a result of new medications. Dr. Mateescu testified that "[h]e still exhibits some symptoms of psychosis and mood instability," but his "symptoms [are] probably half of what they used to be." Defendant still had paranoid delusions. For instance,

defendant was “afraid that some of the patients in the same unit might hurt him.” About two weeks before the hearing, Dr. Mateescu saw defendant talking and mumbling to himself. Defendant told him, “I want to tell you about the money. Somebody stole my money from the—like from the hospital, from the trust fund.” Defendant then claimed that he had stabbed someone, perhaps Dr. Mateescu, in the hallway. His grandiose delusions continued as well. Defendant still believes that people owe him royalties for music he made, which he plans to collect when he leaves the hospital.

Dr. Mateescu opined that while defendant’s condition has improved, he is not in remission. He explained that defendant is still exhibiting symptoms of mood instability and psychosis and is not participating in core groups, which are required by the hospital’s release program. He explained that the groups would help defendant acquire the psychological tools “to allow him to be safe if he’s released.”

Dr. Mateescu also testified that while defendant understands that he has a mental disorder, he does not know what it is and lacks insight into the need that his disorder needs ongoing treatment. According to Dr. Mateescu, defendant “believes that he’s cured.” He does not believe that he has a mental disease and he does not believe that he has a need for treatment, including medication. Dr. Mateescu predicted that, if released, defendant would not continue taking his medications.

Based on the above, Dr. Mateescu opined that defendant “presents a substantial danger of physical harm to others.” He testified that generally a patient’s past history “predicts future offenses” and that, without treatment and structure, there is a greater chance a person can reoffend. Given the increase in medication he intended to implement, Dr. Mateescu believed that by the end of the year defendant might be eligible to enter a conditional release program.

Defendant also testified. He acknowledged that he suffers from “schizophrenic bipolar.” He said he does not hear voices but, when testifying, he exhibited potentially delusional and grandiose beliefs about his own personal history. For example, he stated he was a famous rapper and had a safety deposit box filled

with precious jewels. He was aware the doctor changed his medication about six months ago and said one of the medications makes him calmer and helps him sleep. He knows his medication regimen “by heart.” When defense counsel asked if he would continue to take his medication if released, defendant replied, “That I would. I promise that.” He noted that he made the same promise at his previous hearing and kept his word. Defendant testified that he “definitely would not” hurt or harm anyone upon his release.

At the conclusion of the hearing, the trial court found that defendant represented a substantial danger of physical harm to others and extended his involuntary commitment until February 27, 2019. Defendant timely filed a notice of appeal.

### **Discussion**

The Mentally Disordered Offender Act (MDO Act) (§ 2960 et seq.), enacted in 1985, “ ‘requires that offenders who have been convicted of violent crimes related to their mental disorders, and who continue to pose a danger to society, receive mental health treatment . . . until their mental disorder can be kept in remission.’ ” (*Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1061, disapproved on another point in *People v. Harrison* (2013) 57 Cal.4th 1211, 1230, fn. 2.) “Commitment as an MDO is not indefinite; instead, ‘[a]n MDO is committed for . . . one-year period[s] and thereafter has the right to be released unless the People prove beyond a reasonable doubt that he or she should be recommitted for another year.’ ” (*Id.* at p. 1063.) “A recommitment under the [MDO] law requires proof beyond a reasonable doubt that (1) the patient has a severe mental disorder; (2) the disorder ‘is not in remission or cannot be kept in remission without treatment’; and (3) by reason of that disorder, the patient represents a substantial danger of physical harm to others.” (*People v. Burroughs* (2005) 131 Cal.App.4th 1401, 1404.) Federal due process also requires a showing that defendant had “serious difficulty in controlling [his] behavior.” (*People v. Williams* (2003) 31 Cal.4th 757, 759; *People v. Putnam* (2004) 115 Cal.App.4th 575.)

On appeal, we assess the sufficiency of the evidence to support an MDO commitment under the substantial evidence standard. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.) We must determine “whether, on the whole record, a rational trier of fact could have found that defendant is an MDO beyond a reasonable doubt, considering all the evidence in the light which is most favorable to the People, and drawing all inferences the trier could reasonably have made to support the finding. [Citation.] ‘ “ ‘Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends.’ ” ’ ” (*Ibid.*)

A single opinion by a psychiatric expert that a person is currently dangerous due to a severe mental disorder can constitute substantial evidence to support the extension of a commitment. (Cf. *People v. Zapisek* (2007) 147 Cal.App.4th 1151, 1165 [section 1026.5 commitment].) However, “expert medical opinion evidence that is based upon a ‘ “guess, surmise or conjecture, rather than relevant, probative facts, cannot constitute substantial evidence.” ’ ” (*In re Anthony C.* (2006) 138 Cal.App.4th 1493, 1504.)

Here, defendant contends there was no substantial evidence to support the conclusions that he currently represents a substantial danger of physical harm to others or that he has serious difficulty controlling his dangerous behavior. He notes there was no evidence of violence by him other than his committing offense and contends that the claim he might go off his medication was pure speculation. We disagree.

The MDO Act specifically states that the “substantial danger of physical harm” element “does not require proof of a recent overt act.” (§ 2962, subd. (g); *In re Qawi* (2004) 32 Cal.4th 1, 24 [As used in the MDO Act, “substantial danger of physical harm to others” means “a prediction of future dangerousness by mental health professionals” and does not require “a finding of recent dangerousness as evidenced by tangible acts or threats of violence.”].) Defendant argues that even before he began taking the new medication, he was at worst “ill-tempered and *verbally* abusive” but “never violent or threatening.” He characterizes his behavior as “abnormal but harmless.” Dr. Mateescu’s

testimony suggests, however, that while defendant has not engaged in violence since being committed, his delusions are not harmless. The doctor testified that defendant said that, if released, he would use a gun to “force” people to give him money he believes they owe him. While Dr. Mateescu testified that defendant’s delusions have gradually improved as a result of the medication, he also testified that as of two weeks before the trial, defendant had a delusion that involved stabbing someone. The record therefore establishes that the delusions caused by defendant’s mental illness have at least some violent component.

Dr. Mateescu’s concerns that defendant would stop taking his medication if released were supported by substantial evidence. Defendant’s trial testimony notwithstanding, the doctor reported that defendant repeatedly claimed to have been cured and testified that often when people believe they are cured they do not continue to take their medication. The doctor also testified that defendant told him he did not need the medication and when asked whether he would take the medication if released he replied, “No. I might not need it.” It is not speculative to conclude there is a substantial risk that defendant will stop taking his medication if released.

Finally, Dr. Mateescu testified that at the time defendant committed his criminal assault he was unmedicated and suffering from the same mental disorder. While he has been able to control his conduct while hospitalized and medicated, there is substantial reason to believe that defendant would be unable to control his dangerous behavior if he were released and he stopped taking his medication. Accordingly, substantial evidence supports the trial court’s recommitment order. However, we note with encouragement the doctor’s belief that defendant is continuing to improve and that with an increased dosage of medication that the doctor planned to prescribe it was likely that within a year defendant would be able to enter a conditional release program.

### **Disposition**

The order recommitting defendant as a mentally disordered offender is affirmed.

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POLLAK, P. J.

WE CONCUR:

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TUCHER, J.

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BROWN, J.

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